

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Carriage of Digital Television Broadcast	)	CS Docket No. 98-120
Signals	)	
	)	
Amendments to Part 76 of the	)	
Commission's Rules	)	
	)	
Implementation of the Satellite Home	)	
Viewer Improvement Act of 1999	)	
	)	
Local Broadcast Signal Carriage Issues	)	CS Docket No. 00-96
	)	
Application of Network Non-Duplication,	)	CS Docket No. 00-2
Syndicated Exclusivity and Sports	)	
Blackout Rules to Satellite	)	
Retransmission of Broadcast Signals	)	

**Reply Comments of the**



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## TABLE OF CONTENTS

Summary .....	ii
I. Introduction.....	1
II. Smaller market cable systems have substantially less capacity than that reported by major MSOs .....	3
III. Dual carriage and mandatory carriage of multiplexed signals would impose disproportionate burdens and costs on smaller market cable systems.....	5
A. Dual carriage would impose overly burdensome headend upgrade costs on smaller systems.....	6
B. Mandatory carriage of multiplexed DTV signals would impose substantial additional equipment costs on smaller systems.....	7
C. Because smaller cable systems have significantly less channel capacity, dual carriage would impose greater First Amendment burdens....	9
IV. Conclusion.....	10

## SUMMARY

ACA's most recent comments in this proceeding focused on retransmission consent tying. ACA has now provided the Commission with multiple examples of how network owners are abusing their market power over smaller market cable systems. ACA has also offered suggestions on how the Commission can begin to address this persistent and dangerous trend. As a start, the Commission can help shed some light on networks owners' retransmission consent practices. The Commission, consumer groups, franchise authorities and other interests should know how network owners use retransmission consent tying to drive up the costs of cable in smaller markets. A Commission inquiry is warranted. The scrutiny may encourage network owners to modify their behavior.

These Reply Comments respond to a separate request for information in the *DTV Must Carry Order* – the burdens and costs of DTV carriage on smaller market cable systems. Specifically, we show the following:

- ACA member systems have substantially less capacity than that reported by major MSOs.
- The costs of headend upgrades necessary for dual carriage would impose prohibitively high per-subscriber costs on smaller market systems.
- The costs of equipment necessary to process multiplexed DTV signals would impose additional and substantial costs on smaller market systems.
- With less capacity, dual carriage would displace more programming and services on smaller market systems, thus increasing the First Amendment burdens on those systems.

To avoid imposing undue economic and First Amendment burdens on small cable systems, the Commission should take the following steps:

- Decline to impose a dual carriage requirement during the DTV transition.
- If the Commission does impose some measure of mandatory dual carriage, it should exempt small cable systems from this requirement.
- The Commission should exempt smaller cable systems from mandatory carriage of multiplexed DTV signals unless the broadcaster provides the necessary equipment.

ACA will assist with all available resources as the Commission moves toward developing smaller system regulations governing DTV carriage.

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**Reply Comments of the**



**I. Introduction**

ACA submits these Reply Comments on behalf of more than 900 independent cable companies. Together, ACA members serve about 7.5 million cable subscribers. ACA members range from small, family-run cable systems to multiple system operators focusing on smaller systems and smaller markets. About half of ACA's members serve less than 1,000 subscribers. All ACA members face the challenges of building, operating, and upgrading broadband networks in smaller markets and rural areas.

ACA's most recent comments in this proceeding focused on retransmission consent tying.<sup>1</sup> In response to the Commission's request,<sup>2</sup> ACA provided multiple examples of how network owners are abusing their market power over smaller market cable systems.<sup>3</sup> For ACA members, these examples show a marketplace suffering from serious malfunction. ACA has requested the Commission's assistance in addressing this persistent and dangerous trend, and as a first step, by conducting a fair and open inquiry into network owners' retransmission consent practices.<sup>4</sup>

These Reply Comments respond to a separate request for information in the *DTV Must Carry Order* – the burdens and costs of DTV carriage on smaller market cable systems. Specifically, we address the following:

- smaller system capacity data based on responses to a questionnaire distributed to ACA members;
- the disproportionate burdens and costs of dual carriage on smaller market cable systems; and
- the additional costs involved in protecting smaller system capacity from multiplexed DTV signals not entitled to mandatory carriage.

The data submitted in these Reply Comments provides strong support for the Commission's conclusion not to impose a dual carriage requirement. If the Commission

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<sup>1</sup> Comments of the American Cable Association (filed June 8, 2001) ("ACA Comments").

<sup>2</sup> *In the Matter of Carriage of Digital Television Broadcast Signals*, CS Docket No. 98-120, *First Report and Order and Further Notice of Proposed Rulemaking*, FCC 01-22 (rel. January 23, 2001) ("*DTV Must Carry Order*"), ¶ 35; see also ¶ 121, and Final Regulatory Flexibility Analysis, ¶ 20.

<sup>3</sup> ACA Comments, pp. 4-14.

<sup>4</sup> ACA Comments, pp. 15-16; see also *In the Matter of Petition for Inquiry into Network Practices*, DA 01-1264, Comments of the American Cable Association (filed July 20, 2001).

decides that it must impose some measure of mandatory dual carriage, the evidence of the disproportionate costs borne by smaller cable systems warrants appropriate small system relief.

**II. Smaller market cable systems have substantially less capacity than that reported by major MSOs.**

To better evaluate the First Amendment burdens of dual carriage, the *DTV Must Carry Further Notice* sought additional information on cable system capacity.<sup>5</sup> The record now includes responses by the largest MSOs to the Commission's system capacity surveys. While that information is important, relying solely on the MSO survey results to evaluate the burdens of dual carriage would skew the analysis. The sample leaves an important industry sector underrepresented – nearly 900 smaller cable systems.

To supplement the information gathered in response to the Commission's survey, ACA has obtained system capacity information from several representative independent cable companies. To do so, ACA developed a simplified and streamlined questionnaire based on the Commission's survey form, and more suitable for a smaller cable business.<sup>6</sup> The sample comprised about 280 cable systems serving over 210,000 customers in about 20 states. Nearly all of the systems serve smaller markets. The questionnaire responses are summarized in Table 1.

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<sup>5</sup> *DTV Must Carry Order*, ¶ 112.

<sup>6</sup> See Exhibit 1.

**Table 1**

<b>ACA Member System Capacity Data<sup>7</sup></b>		
	<b>Year end 2000 % of sub base</b>	<b>Year end 2001 % of sub base</b>
Under 500 MHz	52%	46%
550 MHz	21%	27%
750 MHz	5%	5%
Over 750 MHz	21%	21%

The data shows that about 50% of the systems are below 500 MHz, 75% are at or below 550 MHz, and about 25% are at 750 MHz or above.

Table 2 provides a summary of comparable responses submitted by the major MSOs.

**Table 2**

<b>Comparable Major MSOs Capacity Data</b>		
	<b>Year end 2000 % of sub base</b>	<b>Year end 2001 % of sub base</b>
Under 500 MHz	19%	15%
550 MHz	21%	21%
750 MHz	60%	57%
Over 750 MHz	10%	24%

The major MSO data shows nearly a mirror image of the smaller system data. While about 75% of the smaller systems are at 550 MHz and below, about 75% of the

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<sup>7</sup> The ACA questionnaire requested capacity estimates for 2002. Responses showed no meaningful changes from 2001 estimates.

major MSO systems are at 750 MHz or above. Similarly, about 50% of the smaller systems are at 500 MHz or below, while only 15% of the major MSO systems are projected to be at this capacity by year-end 2001.

This smaller system data refutes commercial broadcaster's claim of "exploding cable capacity" in which even small systems purportedly share.<sup>8</sup> Among the broadcast interests in this proceeding, the Public Broadcasters offer a more accurate assessment, recognizing the increased burdens on smaller systems that dual carriage would impose and the need for small system relief.<sup>9</sup>

We turn now to examples of specific DTV burdens facing smaller market cable systems.

**III. Dual carriage and mandatory carriage of multiplexed signals would impose disproportionate burdens and costs on smaller market cable systems.**

The evidence of substantially less capacity on smaller cable systems leads to one conclusion: The burdens of dual carriage would fall disproportionately on smaller market cable. These burdens have several components, including higher headend equipment costs, substantial additional costs due to multiplexed signals, and heightened restrictions on commercial speech. We discuss each of these in sequence below.

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<sup>8</sup> Comments of NAB/MSTV/ALTV (filed June 11, 2001) ("NAB Comments") at 6, 32.

<sup>9</sup> Joint Reply to Oppositions to Petitions for Reconsideration of The Association of America's Public Television Stations, The Public Broadcasting Service, and The Corporation for Public Broadcasting ("Public Broadcasters") (filed June 7, 2001) at 4-5; Ex parte notice of Public Broadcasters, CS Docket 98-120 (filed June 20, 2001).



**A. Dual carriage would impose overly burdensome headend upgrade costs on smaller systems.**

Mandatory dual carriage would require each smaller market cable system to immediately upgrade its headend to receive and cablecast duplicative DTV signals. For the largest small systems – 15,000 subscribers per headend – the cost estimates are daunting. For smaller systems, the costs present an economic impossibility.

Consider the following: Dual carriage would require each small cable system to purchase a DTV antenna and processor for each must carry eligible DTV station. Most smaller market cable systems carry at least the four networks, two independents and one or more NCE stations. ACA members report equipment purchase and installation costs of approximately \$2,500 to \$4,500 per DTV station. Using an average per station cost of \$3,500 for headend equipment, at a minimum, dual carriage of seven stations would impose a burden of \$24,500 per headend.

By definition, a small cable system serves 15,000 or fewer subscribers per headend.<sup>10</sup> For systems at the small system threshold, dual carriage of seven stations would impose a near-term headend cost of about \$1.63 per subscriber. This is a substantially greater financial burden than that imposed on larger systems, which can spread headend costs over a much larger subscriber base. For example, headend costs of the same dual carriage for 75,000 subscriber systems would fall in the range of \$0.32 per subscriber.

Many ACA member systems serve far less than 15,000 subscribers. The Commission's analysis must include those smaller systems as well. Based on the above assumptions, a dual carriage requirement would impose a per-subscriber cost of

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<sup>10</sup> 47 C.F.R. § 76.901(c).

\$4.90 on a 5,000 subscriber system, and \$24.50 on a 1,000 subscriber system. Recall that more than half of ACA members serve less than 1,000 subscribers.

In assessing the burdens of dual carriage on smaller systems, headend upgrade costs provide a readily quantifiable component. To avoid imposing undue burdens on smaller cable operators, if the Commission mandates some measure of dual carriage during the DTV transition, small cable systems<sup>11</sup> should be exempt. This will have a minimal impact on the transition, while providing essential relief to a small class of cable systems consistent with the relief granted under the *Small System Order*.<sup>12</sup>

**B. Mandatory carriage of multiplexed DTV signals would impose substantial additional equipment costs on smaller systems.**

ACA members have raised an additional cost issue that has not yet been addressed in this proceeding – equipment costs related to mandatory carriage of multiplexed DTV signals. Under the *DTV Must Carry Order*, a DTV only broadcaster may assert mandatory carriage for the primary video stream of a multiplexed DTV signal, while the remaining video streams are not entitled to mandatory carriage.<sup>13</sup> This presents the following problem for smaller systems: To prevent a free ride for the secondary video streams, the cable operator must install additional costly headend equipment.

Removing secondary video signals from a multiplexed DTV signal requires installation of one or more pieces of equipment called remultiplexers, commonly known

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<sup>11</sup> As defined in 47 C.F.R. § 76.901(c).

<sup>12</sup> See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393 at ¶¶ 25-36 (rel. June 5, 1995) (“*Small System Order*”).

<sup>13</sup> *DTV Must Carry Order*, ¶ 57.

as “cherry-pickers”. This equipment allows a cable operator to select for cablecasting discrete components of a multiplexed digital video stream. ACA members have received cost estimates for this equipment ranging between \$17,000 and \$24,000. Multiple multiplexed signals may require more than one remultiplexer to decode and filter the signals.

Consequently, in order to prevent a broadcaster from appropriating scarce system capacity with secondary video signals that are not entitled to carriage, cable operators must purchase one or more remultiplexers. For systems serving a large subscriber base, the per-subscriber cost of a remultiplexer, while still a nontrivial cost, may be supportable. Small systems face a different financial calculus.

For the largest small systems, 15,000 subscribers per headend, one remultiplexer to filter and process the signal of one broadcaster who elects to transmit multiple DTV streams would add an additional per-subscriber equipment cost of between \$1.13 and \$1.60. For a 5000 subscriber system, the same equipment will result in per-subscriber costs of between \$3.40 and \$4.80, and for a 1000 subscriber system, per-subscriber costs between \$17.00 and \$24.00. Again, more than half of ACA’s members serve less than 1,000 subscribers.

The ironic and unintended consequence is this: To reduce the burdens of mandatory carriage, the Commission will not require carriage of secondary video streams. Yet, for small systems, the burden of the equipment necessary to remove secondary video signals exceeds what most small systems can support. As a result, secondary video signals achieve a free ride on smaller systems.

To avoid this result, the Commission should permit small cable systems<sup>14</sup> to decline must carry requests by DTV stations transmitting multiple programming streams, unless the station commits to providing the equipment necessary to filter out the secondary video streams. This places the burden on the broadcaster whose programming decisions result in additional equipment costs.

**C. Because smaller cable systems have significantly less channel capacity, dual carriage would impose greater First Amendment burdens.**

The Commission has recognized that dual carriage would impose substantial burdens on the First Amendment rights of all cable operators.<sup>15</sup> The more limited channel capacity of smaller cable systems would exacerbate those burdens. On a much larger scale than upgraded large systems, dual carriage would force smaller systems to drop desirable programming and other services to carry duplicate analog and digital signals. For the industry sector represented by ACA, maximizing the use of available capacity to deliver diverse analog and digital programming and to offer cable modem services is essential to meeting customer demand and competing with DBS. Dual carriage and the cost of filtering multiplexed DTV signals would threaten the viability of many smaller market systems.

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<sup>14</sup> As defined in 47 C.F.R. § 76.901(c).

<sup>15</sup> *DTV Must Carry Order*, ¶ 3.

#### **IV. Conclusion**

ACA appreciates the Commission's concern for the unique burdens and costs of DTV carriage in smaller markets. As shown in these Reply Comments, system capacity remains scarce and additional carriage requirements will threaten the viability of many smaller systems.

To avoid imposing undue economic and First Amendment burdens on small cable systems, the Commission should take the following steps:

- Decline to impose a dual carriage requirement during the DTV transition.
- If the Commission does impose some measure of mandatory dual carriage, it should exempt small cable systems from this requirement.
- Due to the costs of remultiplexers necessary to process multiple video streams, the Commission should exempt smaller cable systems from mandatory carriage of multiplexed DTV signals unless the broadcaster provides the necessary equipment.

ACA will assist with all available resources as the Commission moves toward developing smaller system regulations governing DTV carriage.

Respectfully submitted,

**AMERICAN CABLE ASSOCIATION**

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## **EXHIBIT 1**



*Independent Companies. One Voice.*

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**ACA digital must carry questionnaire**

**July 13, 2001**

ACA is preparing comments for the FCC's digital must carry rulemaking. The Commission has initially concluded that broadcasters do not have must carry rights for both analog and digital signals during the transition to digital television. The Commission has sought additional comments on the burdens of dual carriage, and has specifically requested information from smaller cable systems.

To provide the FCC with information that will help it assess the impact of a dual carriage requirement on small systems, we have prepared the following brief questionnaire. We appreciate your assistance. The data will be aggregated for our comments. All company-specific responses will remain confidential.

Name of company: \_\_\_\_\_

POC: \_\_\_\_\_ Telephone/email: \_\_\_\_\_

**Total number of headends:** \_\_\_\_\_

**Total number of subscribers:** \_\_\_\_\_

**System capacity information** - Use the following table to provide percentages of system capacity based on subscriber base. For example, at year-end 2000, 10% of our subscribers were served by systems passing 750 MHz, 25% of our subscribers were served by systems passing 550 MHz, and 65% were served by systems passing less than 500 MHz. **Best guess estimates are fine.**

<b>System Capacity</b>	<b>Year end 2000 % of sub base</b>	<b>Year end 2001 % of sub base</b>	<b>Year end 2002 % of sub base</b>
>750 MHz	_____ %	_____ %	_____ %
750 MHz	_____ %	_____ %	_____ %
Between 750 and 550 MHz	_____ %	_____ %	_____ %
550 MHz	_____ %	_____ %	_____ %
Under 500 MHz	_____ %	_____ %	_____ %

**Digital satellite programming services:**

Percentage of systems currently offering digital services: \_\_\_\_%

Estimated percentage of systems offering digital services by YE 2002: \_\_\_\_%

**Digital broadcast television:**

Do you expect carry digital broadcast television stations by YE 2002:

If no, why not?

Do you have any retransmission consent agreements for the carriage of digital broadcast signals?

If yes, how many and for which networks?

Thank you for your assistance.